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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/728,465
Filing Date: December 05, 2003
Appellant(s): LUCIANI ET AL.

Mark E. Scott (Reg. No.43,100)
For Appellant

SUPPLEMENTAL EXAMINER'S ANSWER

This is in response to the appeal brief filed 6/30/2009 appealing from the Office action mailed on 5/22/2008 and to correct the error noted by the Remand from the Board of Patent Appeal and Interference sent on 4/12/2010.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

10/729,676

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

NEW GROUND(S) OF REJECTION

Claims Rejection 35 U.S.C. 112

Claims 14-17 and 20 are rejected under 35 USC § 112, ¶ 1, as not being enabled for the scope of the claim. The claims are drafted in a means plus function format and recite only a single means: [A computer system comprising a **means for providing**

remote console session, wherein the means for providing switches to a default remote console session from a non-default remote console session**]**. The claim(s) is/are drawn to only a single element instead of a combination **[**The "means" in claim 14 appears to have at least two functions: (1) providing remote console sessions and (2) switching from default to a non-default session. A mere recital of a multitude of steps in a claim is not determinative of the invention it defines. Claim 14 merely recites a single element to perform a multitude of steps and therefore is a single means claim. See MPEP 2164.08(a). Claims 15, 16, 17 and 20 merely include additional functional limitations and do not provide a combination of other structural elements**].** Thus, every claim listed above is a single means claim.

A single means claim covers every conceivable means for achieving the stated result while the specification discloses at most only those means known to the inventor. *See O'Reilly v. Morse*, 56 U.S. 62, 112, 14 L. Ed. 601 (1853). The U.S. Court of Appeals for the Federal Circuit stated that such a claim is properly rejected based on the first of paragraph of 35 USC § 112, ¶ 1. *In re Hyatt*, 708 F.2d 712, 714-715 (Fed. Cir. 1983).

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

The US Publication number of the Zhu reference listed in the Appeal Brief is not correct (US Pub. No.20030084337). The correct number of the Zhu reference is US Pub. No.20030084169 as follows:

US20030084337	SIMIONESCU ET AL	5-2003
US20020138431	ANTONIN ET AL	9-2002
US20030084169	ZHU ET AL	5-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a U.S. patent application and to prevent possible harassment by multiple assignees. See In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. CIT. 1993); In re Longi, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); In re van Ornurn, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); In re Uogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and In re Thorington,418 F.2d 528, 163 USPQ 644 (CCPA 1969).
2. A timely filed terminal disclaimer in compliance with 37 C.F.R. 1.321(c) would overcome an actual or provisional rejection on this ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 C.F.R. 1.130(b).

3. Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-3 and 14-16 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 15-17 of application 10/729,676 filed 12/5/2003.

5. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patent.

Art Rejection

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simionescu et al.,US Pub. No.20030084337 in view of Antonin et al, US Pub. No.2002/0138431.

As to claim 1, Simionescu discloses a method comprising:

switching between a default console session and a non-default console session and the logging into the remote computer initiates a console session being default control session and then switching the consol session (using the master device to change the state of operation from “normal mode” to “upgrade mode” remotely from a console, see abstract, fig.4, [0031] to [0036] and [0040] to [0043]).

Simionescu does not specifically disclose logging into a remote computer by way of a management processor to initiate a remote console session, the management processor that resides within the remote computer, the management processor different than a central processing unit of the remote computer. However, Antonin discloses logging into a remote computer by way of a management processor to initiate a remote console session, the management processor that resides within the remote computer, the management processor (terminal server 115 fig.1) different than a central processing unit of the remote computer (using the terminal server to provide centralized resources to a number of financial terminals, see fig.1, 0037] to [0040]). It would have been obvious to one of the ordinary skill in the art at the time the invention was made to implement Antonin’s teaching into the computer of Simionescu to process data information because it would have enabled users to access/communicate to an outside server using Internet protocols.

As to claims 2-4, Simionescu discloses that the default remote console session is a hardware-based remote console session and the non-default remote console session is

a software-based remote console session, the default remote console session is a software-based remote console session and the non-default remote console session is a hardware-based remote console session and wherein the default remote console session is adjustable between a hardware-based remote console session and a software-based remote console session (see figs.4, [0040] to [0042] and 0047] to [0049]).

As to claims 5-6, Simionescu discloses determining availability of the default remote console session; disabling the non-default remote console session and enabling the default remote console session, logging into the management processor comprising an application specific integrated circuit, a microcontroller and a memory for communication between the remote computer and the management processor (see [0047] to [0050] and [0064] to [0066]).

9. Claims 14-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simionescu et al.,US Pub. No.20030084337 in view of Zhu et al, US Pub. No.2003/0084169.

As to claim 14, Simionescu discloses a computer system comprising:

means for providing switches to a default remote console session from a non-default remote console session (using the master device to change its state of operation from “normal mode” to “upgrade mode” through a console to better suite the users’ needs such as modifications and upgrades or to reset the entire

network device in case of a failure, see abstract, fig.4, [0031] to [0036] and [0040] to [0043]).

Simionescu does not specifically disclose means for providing a remote console session to a computer system. However, Zhu discloses means for providing a remote console session to a computer system (allowing user access to a remote computer using remote access software/desired data, see abstract, fig.l, [0017] to [0020] and [0037] to [0040]). It would have been obvious to one of the ordinary skill in the art at the time the invention was made to implement Zhu's teaching into the computer of Simionescu to process data information because it would have enabled user to access the target computer during a data conference and thus shared applications located on the target computer with other participants of the data conference (see [0008]).

As to claims 15-17, Simionescu discloses that the default remote console session is a hardware-based remote console session and the non-default remote console session is a software-based remote console session, the default remote console session is a software-based remote console session and the non-default remote console session is a hardware-based remote console session and wherein the default remote console session is adjustable between a hardware-based remote console session and a software-based remote console session (automatically defaults to the upgrade mode if the attempt to start in normal mode fails, see figs.4, [0036] to [0042] and 0047] to [0049]).

As to claims 18-19, Simionescu discloses determining availability of the default remote console session; disabling the non-default remote console session and enabling the default remote console session, logging into the management processor comprising an application specific integrated circuit, a microcontroller and a memory for communication between the remote computer and the management processor (see [0047] to [0050] and [0064] to [0066]).

As to claim 20, Simionescu discloses ascertains availability of the default remote console session, ensures the coupling of the computer system and the means for providing, disables the non-default remote console session and enables the default remote console session (see fig.5, [0033] to [0036] and [0063] to [0066]).

(10) Response to Argument

It is noted that the Appellants do not appeal the provisional double patenting rejection (on page 9 of the Appeal Brief). Therefore, Examiner assumes that the provisional double patenting rejection in the Final Office Action is valid and maintained.

- As to claim 1, Appellant asserts that the combination of references does not disclose switching between a default remote console session and a non-default remote console session and the logging into the

remote computer initiates a console session being default control session and then switching the consol session.

Examiner respectfully disagrees. Examiner respectfully point out the combination of Simionescu and Zhu discloses the Appellant's claimed invention. For example, Simionescu discloses switching between a default remote console session (normal mode) and a non-default remote console session (upgrade mode) and the logging into the remote computer initiates a console session being default control session and then switching the consol session (remotely configuring of the host computer by way of the master device and using the master device to change its state of operation from "normal mode" to "upgrade mode" through a console to better suite the users' needs such as modifications and upgrades or to reset the entire network device in case of a failure, see abstract, fig.4, [0031] to [0036] and [0040] to [0043]). Simionescu does not specifically disclose providing a remote console session to a computer system. However, Zhu discloses providing a remote console session to a computer system (allowing user access to a remote computer using remote access software/desired data, see abstract, fig.l, [0017] to [0020] and [0037] to [0040]). It would have been obvious to one of the ordinary skill in the art at the time the invention was made to implement Zhu's teaching into the computer of Simionescu to process data information because it would have enabled user to access the target computer during a data conference and thus shared

applications located on the target computer with other participants of the data conference (see [0008]).

- As to claims 2-3, Appellants assert that the cited references do not disclose that the default remote console session is a hardware-based remote console session and the non-default remote console session is a software-based remote console session, the default remote console session is a software-based remote console session and the non-default remote console session is a hardware-based remote console.

Examiner respectfully point out that Simionescu discloses that the default remote console session is a hardware-based remote console session (resetting the normal mode in case of hardware failure) and the non-default remote console session is a software-based remote console session (upgrade mode is software upgrade), the default remote console session is a software-based remote console session and the non-default remote console session is a hardware-based remote console session (automatically defaults to the upgrade mode if the attempt to start in normal mode fails, see figs.4, [0036] to [0042] and [0047] to [0049]).

- As to claims 14, 17-20, Appellants assert that the cited references do not disclose means for providing a remote console to the computer

system, whrein the means for providing switches to a default remote console session from a non-default remote console session.

Examiner respectfully disagrees. Examiner respectfully point out the combination of Simionescu and Zhu discloses the Applicant's claimed invention. For example, Simionescu discloses a computer system comprising: means for providing switches to a default remote console session (normal mode) from a non-default remote console session (upgrade mode) (remotely configuring of the host computer by way of the master device and using the master device to change its state of operation from "normal mode" to "upgrade mode" through a console to better suite the users' needs such as modifications and upgrades or to reset the entire network device in case of a failure, see abstract, fig.4, [0031] to [0036] and [0040] to [0043]). Simionescu does not specifically disclose means for providing a remote console session to a computer system. However, Zhu discloses means for providing a remote console session to a computer system (allowing user access to a remote computer using remote access software/desired data, see abstract, fig.l, [0017] to [0020] and [0037] to [0040]). It would have been obvious to one of the ordinary skill in the art at the time the invention was made to implement Zhu's teaching into the computer of Simionescu to process data information because it would have enabled user to access the target computer during a data conference and thus shared

applications located on the target computer with other participants of the data conference (see [0008]).

- As to claims 15 and 16, Appellants assert that the cited references do not disclose that the default remote console session is a hardware-based remote console session and the non-default remote console session is a software-based remote console session, the default remote console session is a software-based remote console session and the non-default remote console session is a hardware-based remote console.

Examiner respectfully point out that Simionescu discloses that the default remote console session is a hardware-based remote console session (resetting the normal mode in case of hardware failure) and the non-default remote console session is a software-based remote console session (upgrade mode is software upgrade), the default remote console session is a software-based remote console session and the non-default remote console session is a hardware-based remote console session (automatically defaults to the upgrade mode if the attempt to start in normal mode fails, see figs.4, [0036] to [0042] and [0047] to [0049]).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Khanh Q Dinh/

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